

EXHIBIT B

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----X

3 UNITED STATES OF AMERICA,

4 v. 07-CR-840 (PAC)

5 GEORGE FRANK MYLES, JR., a/k/a
6 George Miles,

7 Defendant.

-----X

8 New York, N.Y.
9 October 23, 2007
10 11:22 a.m.

11 Before:

12 HON. PAUL A. CROTTY,

13 District Judge

14 APPEARANCES

15 MICHAEL J. GARCIA
16 United States Attorney for the
17 Southern District of New York
18 CHRISTOPHER LaVIGNE
JENNIFER G. RODGERS
Assistant United States Attorneys

19 FEDERAL DEFENDERS OF NY INC.
Attorneys for Defendant
20 BY: DAVID E. PATTON, ESQ.

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1 (In open court)

2 (Case called)

3 THE DEPUTY CLERK: : For the government, please state
4 your appearances for the record.

5 MR. LaVIGNE: : Good morning, your Honor.
6 Christopher LaVigne and Jennifer Rodgers on behalf of the
7 government.

8 THE COURT: : Mr. LaVigne, Ms. Rodgers.

9 MS. RODGERS: : Good morning.

10 MR. PATTON: : Good morning, your Honor, David Patton
11 with Federal Defenders for Mr. Myles.

12 THE COURT: : Good morning, Mr. Patton.

13 MR. PATTON: : And Mr. Myles is present.

14 THE COURT: : Good morning, Mr. Myles. How are you.

15 THE DEFENDANT: : How are you, sir.

16 THE COURT: : All right. Mr. Patton, this is your
17 application, so...

18 MR. PATTON: : It is, your Honor.

19 I don't have any new information to add to what we've
20 submitted in our papers, but I think the main thrust of our
21 argument for transfer, your Honor, is that this case simply
22 doesn't have anything to do with New York. Mr. Myles has no
23 personal or professional connection to New York and none of his
24 alleged conduct occurred in New York, even in the broadest
25 sense of deciding what his conduct was and looking at

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1 coconspirators as well. There's simply nothing that occurred
2 in the Southern District of New York.

3 THE COURT: : Well, what do you say about the money
4 transfers and the possible overflights from JFK?

5 MR. PATTON: : Well, I would agree that the
6 government has made a valiant effort, arguing that venue exists
7 in the Southern District of New York. We disagree with that,
8 and obviously if the case remains --

9 THE COURT: : Presuming you're right on that
10 argument.

11 MR. PATTON: : Absolutely. But neither of those
12 activities or those facts say anything at all about why this
13 case should be here, which is really what a motion to transfer
14 venue is all about. It's an equitable motion. The caselaw
15 talks about balancing the equities. The leading Supreme Court
16 case, *Platt*, discusses the type of factors that should be
17 considered when balancing --

18 THE COURT: : You list those factors and you say as
19 to those factors they point very much in favor of the transfer
20 to Florida.

21 MR. PATTON: : Yes, sir.

22 THE COURT: : And Mr. LaVigne lists the same ten
23 factors. I guess there's really only eight factors that count
24 here because some of them are not applicable, such as the
25 destruction of business, factor number 5, but he points to the

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1 same eight factors that you point to and says, well, they
2 really all indicate New York.

3 MR. PATTON: : Well, Mr. LaVigne is a fine lawyer,
4 your Honor, and his job is to make arguments, and I think the
5 government does what it can with the facts here, but the fact
6 is they argue with respect to the events. The location of the
7 events, let's take that as an example, why the government says
8 the location of the events favors New York. The three facts,
9 as I went through their motion, that support that the location
10 of events favors New York rather than Florida are: one, that
11 wire transfers were cleared through here. And I think it's
12 highly significant that no money originated or terminated in
13 New York. It simply passed through New York. Nobody, and
14 especially Mr. Myles, maintained a bank account in New York,
15 which, again, that would be a tenuous connection to New York
16 and we'd still be making this motion even if Mr. Myles say
17 maintained a bank account in New York. And we list a number of
18 cases, I can think of at least half a dozen, where there was
19 that type of connection to New York, where somebody actually
20 had a bank account here, and where transfer was granted
21 nonetheless because still the equities weighed in favor of
22 moving it. But here we don't even have that. And the
23 government just never points to a single case where venue was
24 as tenuous as it is here, if it does exist, and where transfer
25 was denied. It's hard to imagine a more tenuous connection to

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1 New York. So that's one.

2 The other are these DHL shipments, which, again, the
3 government at this point can't even say with certainty whether
4 that even provides them with venue. DHL apparently -- and I
5 accept the government's representation on this, but -- says
6 that DHL sends everything through JFK. Well, as your Honor
7 knows, JFK is in the Eastern District. And so the government
8 says, and it may be that these flights passed over Southern
9 District airspace. Well, again, maybe they win in the end on
10 whether or not venue exists here. I don't think they do. I
11 think that's far too tenuous. But it certainly doesn't go to
12 the equities.

13 THE COURT: : Was there any affidavit from the FAA
14 that flight patterns from JFK transit the Southern District of
15 New York?

16 MR. PATTON: : I would --

17 THE COURT: : No. The answer is no.

18 MR. LaVIGNE: : No.

19 MR. PATTON: : No. So...

20 THE COURT: : I don't suppose it's within your
21 knowledge as to whether or not they do or don't.

22 MR. PATTON: : It's not within my knowledge.

23 THE COURT: : All right.

24 MR. PATTON: : And then lastly, the government
25 includes something about one of the customers that the

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1 government alleges Mr. Myles had sold parts to had made
2 solicitations to parts sellers throughout the country, and one
3 of the people he solicited was in Westchester. And that's
4 apparently why the New York ICE agents and US Attorney's Office
5 became involved in this investigation. Now that was prior to
6 Mr. Myles' involvement, according to the government's own
7 dates. All they say is that this person, CC1 from the Middle
8 East, solicited parts from somebody in Westchester, doesn't say
9 that any transaction actually took place, and more
10 importantly --

11 THE COURT: : It also doesn't say what the connection
12 is between the person in Westchester and Mr. Myles --

13 MR. PATTON: : There's none.

14 THE COURT: : -- if any.

15 MR. PATTON: : Absolutely. I mean, there's certainly
16 no allegation.

17 So that to me is just a complete red herring. That to
18 me -- there's no question that that doesn't even provide venue,
19 much less a basis for denying transfer.

20 So that's the long-winded answer of taking one example
21 of the ten factors and saying, those are the government's
22 arguments and I commend them for coming up with them, but
23 frankly, I just don't think they hold any water at all when it
24 comes to weighing whether this case should be here. It may go
25 some ways in their argument down the road about why it can be

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1 here but certainly says nothing about the *Platt* factors or the
2 equities.

3 THE COURT: : All right. Mr. LaVigne?

4 MR. LaVIGNE: : Your Honor, as you indicated, this is
5 Mr. Patton's motion. It's Mr. Patton's burden to show that
6 transfer is warranted. And there's a strong presumption, as we
7 cited in our brief, that cases should be prosecuted in the
8 districts in which they were indicted.

9 THE COURT: : Correct.

10 MR. LaVIGNE: : And here, looking at the *Platt* --

11 THE COURT: : There's got to be some basis for it
12 though, right?

13 MR. LaVIGNE: : Yes, your Honor, and there is a basis
14 to bring this.

15 THE COURT: : What's the basis?

16 MR. LaVIGNE: : To bring the case here in the
17 Southern District of New York?

18 THE COURT: : Yes.

19 MR. LaVIGNE: : The basis is that, as we alluded to,
20 the investigation originated here out of the Southern District
21 of New York.

22 THE COURT: : Let me ask you a question. Your sealed
23 complaint filed by Marcos Castro, he being duly sworn and
24 deposes and says, he talks about the conspiracy to violate the
25 Arms Export Control Act and he talks about Mr. Myles' role and

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1 the role of several others, and then he says the basis of his
2 knowledge and information is based on the affidavit of Sean
3 Willman in support of a search warrant. And then I read
4 Mr. Willman's affidavit, which he swore to in April of 2007,
5 before Magistrate Judge Snow in the Southern District of
6 Florida, and there's nothing about New York in it. It's all
7 about Florida. So what happened in New York that justifies
8 your assertion of venue in this jurisdiction?

9 MR. LaVIGNE: : Your Honor, if I may just have a
10 moment, I believe there were references in this complaint to
11 wire transfers going through New York, page 22, for example,
12 and we cite those in our brief.

13 THE COURT: : Right. Those were used as the
14 justification for the search warrant and the execution of the
15 search warrant in Florida.

16 MR. LaVIGNE: : No, Judge, the reason why the search
17 warrant was executed in Florida was because --

18 THE COURT: : Because that's where the documents
19 were, that's where the business was transacted that Mr. Myles
20 was engaged in, correct?

21 MR. LaVIGNE: : That's correct, your Honor. That's
22 where his business was located. The reason for bringing the
23 case here is that, as we indicated, the investigation started
24 out of here, but putting that aside in terms of venue
25 considerations, wire transfers were cleared through the

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1 Southern District of New York.

2 THE COURT: : Tell me a little bit about the wire
3 transfers. As I understand it, wire transfers, for any
4 transactions denominated in dollars from a foreign source, in
5 order to be converted into dollars, have to transit New York.

6 MR. LaVIGNE: : I don't know the answer to that, your
7 Honor. In the case of these specific --

8 THE COURT: : Well, that's what I know from admiralty
9 law where under admiralty law that's how things are seized all
10 the time in the Southern District of New York. Because
11 transactions denominated in dollars have to transit through the
12 federal wire, the Federal Reserve bank's wire system for
13 conversion. That's a pretty slender reed for jurisdiction,
14 pretty slender reed for laying venue in New York, and it has no
15 connection at all with Mr. Myles.

16 MR. LaVIGNE: : But your Honor, it does have a
17 connection with Mr. Myles in the sense that that's how Mr.
18 Myles was compensated. Mr. Myles would not have engaged in
19 this conspiracy, nor would he have engaged in shipping USML
20 parts directly overseas to the Middle East had he not been
21 paid. And the only way -- the only way he was able to be paid
22 was by these overseas wire transfers, which came through the
23 Southern District of New York.

24 And at this stage, as Mr. Patton has indicated on a
25 handful of occasions in his briefs and today, this is not a

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1 motion to dismiss for lack of venue. Venue is relevant to the
2 extent that the location of events is one of the *Platt* factors
3 named. And this is an international conspiracy. This is not a
4 case where a crime scene, for example, is relevant, such as a
5 murder case. The location of events with respect to Florida
6 are not going to be in issue. And we do cite cases in our
7 brief, *Guastella* is one, *Spy Factory* is another, the *Wilson*
8 case as well, where the courts talk about the fact that, where
9 conduct is international in scope or even national in scope,
10 the location of events really does not favor either side. And
11 we've never contended that the location of events does favor
12 New York. We contend venue is sufficient and that we'll meet
13 our burden at trial in establishing by a preponderance of the
14 evidence, but for purposes of this motion, location of events
15 does not weigh in favor of transfer. The nerve center of this
16 conspiracy is the Middle East, pure and simple. That's what
17 this --

18 THE COURT: : It's not going to be tried in the
19 Middle East.

20 MR. LaVIGNE: : It's not going to be tried in the
21 Middle East, but hopefully others will be tried here in the
22 United States. And given that the location of events favors
23 neither side, taking all of the other *Platt* factors in
24 totality, the defendant has not met his burden. Residence of
25 the defendant, for example, is something that counsel's focused

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1 upon, but Mr. Myles is incarcerated, and he'll be
2 incarcerated -- assuming his appeal is not granted and he's not
3 resentenced, he'll be incarcerated for the pendency of this
4 litigation. Now --

5 THE COURT: : So in your view he's stripped of his
6 residence then and his connection with his home community
7 because he's currently incarcerated? You can try him anywhere
8 then, right?

9 MR. LaVIGNE: : Assuming that the government can
10 establish venue anywhere. But the argument hasn't been made --
11 and one of the reasons for transfers of venue in large part is
12 that it can significantly disrupt a defendant's life to be
13 tried in a far-away community. That being said, we cited cases
14 in our brief where defendants have been tried in the Southern
15 District of New York even though they reside in California, or
16 Las Vegas. Here that disruption to the defendant's life is not
17 an issue. He's incarcerated. He does not have the family
18 obligations that many of those defendants have.

19 THE COURT: : Mr. LaVigne, let's review the factors
20 that put the crime here in the Southern District of New York.
21 One is, you started your investigation here, correct?

22 MR. LaVIGNE: : That's correct, your Honor.

23 THE COURT: : And the other ones are money transfers
24 through the Federal Reserve wire system.

25 MR. LaVIGNE: : And correspondent banks, your Honor.

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1 THE COURT: : And correspondent banks. And what
2 else?

3 MR. LaVIGNE: : Well, your Honor, in addition, we
4 discussed in our brief the airspace over the Southern District
5 of New York.

6 THE COURT: : You're not really serious about that
7 one, are you?

8 MR. LaVIGNE: : Absolutely, Judge. Absolutely.
9 We've cited cases in our brief that say, and if we're talking
10 about venue now, that airspace over a district is sufficient.
11 And this is not an instance where Mr. Myles was unaware that
12 shipments were being sent from Fort Lauderdale to JFK
13 International Airport and then overseas. As we alluded to in
14 our brief, we have correspondence between Mr. Myles and customs
15 and border protection agents who were working at JFK who
16 intercepted certain shipments, albeit they're not charged, but
17 that certainly does show knowledge. And again, this is a
18 conspiracy charge. Venue is proper in any district, as we
19 indicated, under 18 US Code Section 3237, through which I
20 believe mail or commerce travels.

21 THE COURT: : Now in your complaint here, the sealed
22 complaint, which is Exhibit A to your memorandum of law in
23 opposition, Mr. LaVigne, there's a reference to Mr. Davis and
24 Ms. Douglas --

25 MR. LaVIGNE: : That's correct, your Honor.

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1 THE COURT: : -- as coconspirators.

2 MR. LaVIGNE: : That's correct.

3 THE COURT: : Have they been indicted?

4 MR. LaVIGNE: : No, they have not, your Honor.

5 THE COURT: : Okay. Are they going to be indicted
6 here in the Southern District, do you know? Can you say? I
7 don't want to pressure you too far.

8 MR. LaVIGNE: : Your Honor, I expect they will be
9 charged here in the Southern District of New York shortly.

10 THE COURT: : Did they have any money transfers?

11 MR. LaVIGNE: : Yes, yes, your Honor. Ms. Douglas
12 was an employee of Mr. Myles. Mr. Davis, though, also received
13 wire transfers.

14 And looking at the other factors, Judge, we're talking
15 about the location of the possible witnesses. Counsel has
16 alluded to several purported character witnesses that Mr. Myles
17 would like to call on his behalf. He has not identified them
18 with specificity, nor has he shown that they will be
19 unavailable to testify. And regarding the expense, CJA will
20 compensate or will pay for the travel and testimony of those
21 witnesses. Were the government to try this case in Florida,
22 the government would have to incur significant expense in terms
23 of law enforcement agents and just generally having two
24 assistant United States attorneys be there for the pendency of
25 the trial.

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1 And as we also indicated in our brief, another factor
2 that does weigh against transfer is the location of counsel.
3 Mr. Myles has been represented by Federal Defenders of New York
4 at this point for approximately four to five months, has not
5 shown that counsel in Florida is more familiar with this case
6 than his current counsel now, and that also is a factor that
7 weighs against transfer.

8 On balance, Judge, given the fact that it's the
9 defendant's burden to prove transfer, given the fact that
10 there's a strong presumption in allowing cases to be brought in
11 the district for which they were charged, and given the fact
12 that this is an international conspiracy, a case where
13 Mr. Myles' business, while the actual office was in Fort
14 Lauderdale, the business was conducted by fax, by email, by
15 telephone, by internet. The locus of events is not significant
16 for purposes of this case. Therefore, that factor, which has
17 really been the focus of Mr. Patton's motion, is neutral. It's
18 neutral.

19 And the fact that the defendant is incarcerated rather
20 than at liberty in the community and having various family
21 obligations that could be interrupted also does not weigh in
22 favor of transfer.

23 So on balance, the government does not believe that
24 Mr. Patton or Mr. Myles have met their burden in seeking to
25 transfer this case.

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1 THE COURT: : Mr. Patton? Last word on this.

2 MR. PATTON: : Your Honor, I would just say with

3 respect to this idea that it's a global conspiracy and

4 therefore New York is as good a place as any to bring the

5 charges against Mr. Myles, I agree, we live in a modern age

6 where businesses are conducted by fax and email and wire

7 transfers and so on and so forth. And had Mr. Myles been

8 telephoning people in New York, had he been mailing people in

9 New York, had he been conducting business with people in New

10 York, whether he had actually come here or not, I think the

11 government would be on much stronger footing. But those are

12 simply not the facts. All of this faxing and emailing and so

13 on and so forth was done from Florida and it was not done to or

14 from New York.

15 And with respect to his personal circumstances, being

16 incarcerated, as we said in our reply brief, I honestly think

17 that if anything, that favors transfer more than if he were

18 not. He's up here without family visits, without the support

19 of people to come see him. If counsel is to do any

20 investigating, it's going to have to be in Florida. Florida is

21 the natural place for that to take place, for his counsel to be

22 near whatever character witnesses need to be interviewed,

23 whatever fact witnesses need to be interviewed. And for the

24 pendency of this trial, for Mr. Myles to have the support of

25 his family and friends, I think it's basic, it's a basic part

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1 of the consideration in these cases, and it doesn't weigh any
2 less strongly in Mr. Myles' favor simply because he's unable to
3 move freely. Frankly, it just means that while this case is
4 pending, instead of being able to return to his family, he
5 won't be able to.

6 THE COURT: : All right. Article III of the
7 Constitution provides that all cases, all crimes shall be tried
8 by a jury and such trial will be held in the state where the
9 same crime has been committed. I doubt whether this creates a
10 constitutionally based right that the defendant has to be tried
11 in his home district. And the parties agree that the question
12 of venue, whether it's appropriate in the Southern District of
13 New York, is not really the issue.

14 What is before the Court is defendant's motion
15 pursuant to Federal Rule of Criminal Procedure 21(b), which
16 provides that upon defendant's motion, the Court can transfer
17 the proceeding to another district for the convenience of the
18 parties and witnesses and in the interests of justice.

19 Both sides also agree that the controlling law is set
20 forth in the *Platt* case reported at 376 US 240. And the *Platt*
21 factors, there's ten of them, and while Mr. Justice Clark, in
22 announcing his decision, recited the ten factors, it's clear
23 that they were the factors determined and considered by the
24 district court judge. Those ten factors are as follows:

25 The location of the defendant; the location of the

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1 witnesses; the location of the events likely to be at issue;
2 the location of documents; the disruption, if the case is not
3 transferred, disruption of defendant's business; the expense to
4 the parties; location of counsel; relative accessibility to
5 venue; docket conditions; and special elements.

6 I find that there's no special elements here. And the
7 docket conditions are not particularly indicative one way or
8 the other. And in light of the defendant's incarceration, I
9 find that there's no disruption to the defendant's business
10 because in his current status, the defendant has no business to
11 be disrupted.

12 On each of the other factors, however, I find that
13 they tip decidedly in favor of transfer. Notwithstanding the
14 government's arguments that the defendant is federally
15 incarcerated in an unrelated matter, there is no doubt that
16 Mr. Myles is a resident of the state of Florida. He has
17 substantial witnesses, to the extent that he has character
18 witnesses, and there may be other witnesses in Florida with
19 respect to the subject matter of the crime. Many of the
20 events, in particular Mr. Myles' participation in this
21 conspiracy, occurred only in Florida.

22 And with respect to the documents, notwithstanding the
23 government's arguments that the documents, many of the
24 documents are already here in New York, that can hardly be
25 dispositive because the documents can be shipped anywhere.

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1 What's more important is that the documents were obtained in
2 the state of Florida pursuant to a search warrant.

3 I find the expense of the parties to be far more
4 onerous for the defendant's witnesses than it would be for the
5 government.

6 Location of counsel tips slightly in favor of the
7 defendant.

8 Florida is certainly the more accessible state.

9 What's really troubling to me is that the government's
10 basis for venue here in the Southern District of New York is to
11 me a very slender reed. The idea that money transfers
12 occurring through the federal wire system confirm or convey
13 venue here in the Southern District of New York is a very
14 severe stretch so far as I am concerned, as is the flying of
15 DHL Courier Services out of JFK may transit airspace over the
16 Southern District of New York. If those two facts were the
17 case, I believe that almost every single case and certainly
18 every securities case in the United States of America could be
19 brought here in the Southern District of New York. And that is
20 a possibility that I do not want to contemplate.

21 At any rate, it's the finding of the Court on these
22 facts and the law that defendant has carried its burden, and
23 I'm going to transfer this case to the Southern District of
24 Florida, which is the residence of Mr. Myles, where the search
25 warrant was first executed, where the documents in their

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1 original condition were located, and where Mr. Myles, to the
2 extent he participated in this conspiracy, he did his
3 participation from the Southern District of Florida.

4 I'll enter an order to that effect granting the
5 defendant's application to transfer this matter to the Southern
6 District of Florida.

7 Anything else, Mr. Patton?

8 MR. PATTON: : No, your Honor. Thank you.

9 THE COURT: : Mr. LaVigne?

10 MR. LaVIGNE: : Your Honor, may I have one moment?

11 THE COURT: : Yes.

12 (Pause)

13 MR. LaVIGNE: : Judge --

14 THE COURT: : Yes, Mr. LaVigne.

15 MR. LaVIGNE: : -- it appears that time will be
16 excluded and should be excluded under the Speedy Trial Act in
17 order to effectuate the transfer, but out of an abundance of
18 caution, the government would ask that time be excluded for a
19 period until a control date set by your Honor?

20 THE COURT: : How much time do you think you need?

21 MR. LaVIGNE: : The Marshals are responsible for
22 transferring him to -- transferring Mr. Myles to Florida.
23 Obviously we'll inform them as soon as possible. Probably
24 three weeks I think would be the amount of time it would take
25 for Mr. Myles to get down.

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1 THE COURT: : Why don't we say a month. I mean, I
2 know the Marshals' transportation service can take a lot of
3 time.

4 MR. LaVIGNE: : Right.

5 THE COURT: : Mr. Patton?

6 MR. PATTON: : That's fine, your Honor. What I would
7 propose then is to be set down a control date and a potential
8 court appearance for 30 days from now. Hopefully that won't be
9 necessary. And if he's out of the district, we can contact
10 chambers and say it's not necessary to appear.

11 THE DEPUTY CLERK: : 30 days would be Thanksgiving,
12 so the Monday following is November 26th, 2007, 2:30 p.m.

13 THE COURT: : Mr. LaVigne, is that satisfactory?

14 MR. LaVIGNE: : That's fine, Judge.

15 MR. PATTON: : I'm sorry. Did you say -- I have
16 Monday as the 26th.

17 THE DEPUTY CLERK: : Monday the 26th.

18 MR. PATTON: : All right. Thank you.

19 THE COURT: : The time between now and Monday,
20 November 26th, will be excluded in order to facilitate the
21 parties' compliance with the order of the Court which has just
22 been entered on the record. And those interests outweigh the
23 interests of the public and the defendant in a speedy trial, so
24 the time up through November 26th will be excluded.

25 Anything else?

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1 MR. LaVIGNE: : No, your Honor.

2 THE COURT: : Thank you very much.

3 THE DEPUTY CLERK: : This court stands in recess.

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